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# What's your first name?

## The Referral

The Court Administrator sends you the intake memo for 2 kids who came into custody last night – a 14 year old girl, Jessica, and an 8 year old boy, Bobby. You have been appointed to represent the mother, Heather, at the shelter hearing since she is unemployed. Report alleged there was drug use in the home, both children are missing a lot of school and they are dirty and smelly half the time when they do come to school, and the kids say the house is a mess.



Heather shows up at the courthouse for the shelter hearing. She has brought with her, her mother, April, and her boyfriend of 10 years, James. You are able to meet with her in a side room at the courthouse before the shelter hearing. Mom wants April and James to come into the room with her for her initial meeting with you. Should you:

# At your 1st meeting with your client, should you:

- A. Tell them to come on in to tell you what's going on
- B. Get mom in the room and explain attorney client privilege and that it can be waived by them being in the room
- C. Get mom in the room and not let April and James in the room and tell her you just need to hear from her for now.
- D. Meet with them out in the lobby since it would be kinda of cramped in the room with all of them in there.

# LAWYER CLIENT PRIVILEGE

MS Rules Of Evidence Rule 502 (a)(5) A communication is “confidential” if not intended to be disclosed to third persons other than those:

- (A) To whom disclosure is made to further rendition of professional legal services to the client; or
- (B) Reasonably necessary to transmit the communication.

Committee note: A communication which takes place in the presence of a third party IS NOT CONFIDENTIAL unless it complies with the statement in Rule 502(a)(5)



Heather decides to go ahead and get Grandmother and boyfriend in the room. She tells you there is no drug problem. She says the kids have been passing the stomach bug back and forth among the family and sure the house is cluttered but it's not "dirty". She tells you she KNOWS that it was the school's assistant principal, Mr. Smith, who called in the report. She says that she has had a couple run ins with him and he was just so rude. She asks you, "I know it was him. It was, wasn't it!?!?" Should you:

## Heather wants to know who reported, should you:

- A. Tell her it wasn't Mr. Smith
- B. Tell her it wasn't anyone from the school
- C. Tell her it may have been the teacher, Ms. Miller
- D. Tell her that you can't tell her who called in the report.
- E. Tell her you don't know who called it in.
- F. Report to the Court that CPS forgot to redact the name of the reporter.

## Miss. Code §43-21-261(3)

- ▶ Upon request, the parent, guardian or custodian of the child who is the subject of a youth court cause or any attorney for such parent, guardian or custodian, shall have the right to **inspect** any record, report, or investigation relevant to a matter to be heard by a youth court, **EXCEPT** that the identity of the reporter **SHALL NOT BE RELEASED**, nor the name of any other person where the person or agency making the information available finds that disclosure of the information would be likely to endanger the life or safety of such person...A record provided to the attorney under this section **MUST** remain in the attorney's control and the attorney **MAY NOT** provide copies or access to another person or entity without prior consent of a court with appropriate jurisdiction.

You speak to CPS investigator before the hearing, Tiffany, who shows you pictures of the home. The home has dirty dishes, roaches in the kitchen and pet droppings in the corners. The kids have their own rooms but their mattresses are on the floor. Heather and James share a bedroom. Heather and James have both refused to take a drug screen. Tiffany also gives you the 2021-2022 school attendance reports. Jessica has missed 25 days of school this year and Bobby has missed 20 days. There are doctor's excuses for 3 days and 2 days respectively. Mom, Heather, has sent in parent excuses for a few days at the beginning of the school year but nothing recently. You know that CPS/prosecutor can show probable cause that the children needed to be removed from the home. Should you:

# Shelter or no shelter?

- A. Go forward on the hearing anyway
- B. Speak to your client about the possibility of waiving the shelter hearing and let her choose
- C. Waive the shelter hearing for your client.




CLIENT DRIVEN  
REPRESENTATION!!!



## MRPC Rule 1.4 Communication

- ▶ (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- ▶ (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.



Jessica's dad calls you wanting to know what is going on. His name is Chris. Chris tells you that Heather gave him your name and number and said to call you to see what was going on with Jessica.  
Should you:




## Jessica's Dad?

- A. Go ahead and talk to him because he had to have gotten your info from your client.
- B. Tell him you can't tell him anything about the case due to confidentiality
- C. Tell him to contact the CPS worker
- D. Both A & C
- E. Both B & C

## MRPC RULE 4.3 DEALING WITH UNREPRESENTED PERSON

- ▶ In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonably possibility of being in conflict with the interests of the client. In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.



Heather calls you and tells you  
that she thinks there is a good  
chance James isn't really  
Bobby's biological father. She  
tells you that James doesn't  
know and she doesn't want him  
to know.  
Should you:

# Bobby's Father?


- A. Do nothing with this information
- B. Disclose the chance to the Court since the Court needs to know if there is a possibility that James isn't the father.
- C. Disclose to CPS since CPS needs to know if there is a possibility that James isn't the father.

## MRPC RULE 1.6 CONFIDENTIALITY OF INFORMATION

- ▶ (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b).
- ▶ (2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interest or property of another and in furtherance of which the client has used or is using the lawyer's services;

## MRPC RULE 3.3 CANDOR TOWARD THE TRIBUNAL

- ▶ (a) A lawyer shall not knowingly: (1) make a false statement of material fact or law to a tribunal; (2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client; (3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or (4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures. (b) The duties stated in paragraph (a) continue to the conclusion of the proceeding and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6. (c) A lawyer may refuse to offer evidence that the lawyer reasonably believes is false. (d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse.



You find out through the  
grapevine that Heather  
was arrested for DUI last  
night.  
Should you:

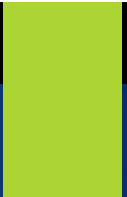
## Heather is arrested for DUI. Should you:

- A. Verify the information but do nothing else.
- B. Verify the information and set up contact with her to talk about how this affects her case
- C. Call CPS and let them know where they can find your client.
- D. Let the Court Administrator know where they can find your client.
- E. Some combination of the other 4 answers



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Heather calls you from the jail. She says that her bail is only \$50 and asks if you can pay it to get her out so she can be home for her kids.

Should you:


**Heather calls from the jail for bail money. Should you:**

A. Loan her the money  
since it will help her  
pending Youth Court Case

B. Explain to her that you  
can't give her any money.

## MRPC RULE 1.8 CONFLICT OF INTEREST: PROHIBITED TRANSACTIONS (e)

- ▶ (e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, or administrative proceedings, except that: 1. A lawyer may advance court costs and expenses of litigation, including but not limited to reasonable medical expenses necessary to the preparation of the litigation for hearing or trial, the repayment of which may be contingent on the outcome of the matter; and 2. A lawyer representing a client may, in addition to the above, advance the following costs and expenses on behalf of the client, which shall be repaid upon successful conclusion of the matter. 34 a. Reasonable and necessary medical expenses associated with treatment for the injury giving rise to the litigation or administrative proceeding for which the client seeks legal representation; and b. Reasonable and necessary living expenses incurred. The expenses enumerated in paragraph 2 above can only be advanced to a client under dire and necessitous circumstances, and shall be limited to minimal living expenses of minor sums such as those necessary to prevent foreclosure or repossession or for necessary medical treatment. There can be no payment of expenses under paragraph 2 until the expiration of 60 days after the client has signed a contract of employment with counsel. Such payments under paragraph 2 cannot include a promise of future payments, and counsel cannot promise any such payments in any type of communication to the public, and such funds may only be advanced after due diligence and inquiry into the circumstances of the client.



Client doesn't show up for  
her review hearing. You  
can't get in touch with her  
and no one has heard from  
her.

Should you:

## Client is a no show. Should you:

A. Ask for a continuance


B. Proceed without her and  
tell the Court you don't know  
where she is

C. Ask CPS if they have heard  
from her and let them testify  
about why she isn't in court.



## RULE 3.2 EXPEDITING LITIGATION

- ▶ A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.



Heather calls you the next week. She asks for a copy of all the information that CPS has given you.

Should you:




## Heather wants a copy of her CPS information. Should you:

- A. Give her the requested information, it's her file.
- B. Give her a redacted copy
- C. Explain you can discuss the information with her but you can't give her copies

## Miss. Code §43-21-261(3)

- ▶ Upon request, the parent, guardian or custodian of the child who is the subject of a youth court cause or any attorney for such parent, guardian or custodian, shall have the right to **inspect** any record, report, or investigation relevant to a matter to be heard by a youth court, **EXCEPT** that the identity of the reporter **SHALL NOT BE RELEASED**, nor the name of any other person where the person or agency making the information available finds that disclosure of the information would be likely to endanger the life or safety of such person.



Heather took a hair follicle screen and results were positive for THC, amphetamine and methamphetamine. She tells you she uses a CBD vape so that must be where the THC came from. And she sometimes uses Prilosec and Benadryl. She insists that those meds caused false positives because she absolutely does not use drugs. She sends you the information she found on the internet and wants you to present it at the next hearing. You explain to her that the info she sent was on urine screens and attempt to tell her how that is different, but she insists that you present it to the judge.

Should you?


# Heather wants you to present articles of why she may have failed her hair follicle test. Should you:

- A. Present the articles to the Court
- B. Refuse to present any articles about false positives on urine screens
- C. Make sure the testing company is present to testify about false positives
- D. Both A & C
- E. Both B & C
- F. Do A, B, and C.



## MRPC RULE 3.1 MERITORIOUS CLAIMS AND CONTENTIONS

- ▶ A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and in fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.



Heather is supposed to get a mental health evaluation. She goes and the doctor calls you wanting the court orders and court reports for him to review as part of the evaluation.

## Can you release records to the doctor?

- A. Send the records to the doctor
- B. Get a court order to release the records to the doctor
- C. Get CPS to release the records

## Miss. Code §43-21-261(3)

- ▶ A record provided to the attorney under this section **MUST** remain in the attorney's control and the attorney **MAY NOT** provide copies or access to another person or entity without prior consent of a court with appropriate jurisdiction.





Jessica and Bobby are placed in the home on a 90 day trial home placement. Heather calls you one morning and tells you that she lost her temper last night and spanked Bobby. She says that she left a mark that's still there this morning.  
Should you?

# Kids in 90 Day trial home placement and spanked Bobby.

## Should you:

A. Encourage her to self-report to her CPS worker

B. Make an anonymous report to the CPS hotline


C. Report it to Heather's CPS worker

D. Do nothing.

E. Do A. B. and C.

## 43-21-353 Reporting Abuse or Neglect

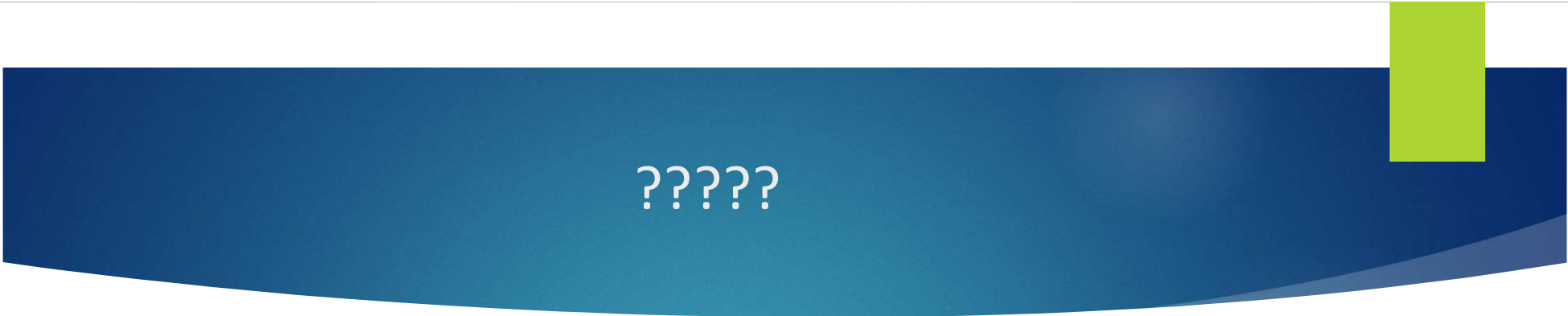
- ▶ (1) Any ATTORNEY.....SOCIAL WORKER, FAMILY PROTECTION WORKER, FAMILY PROTECTION SPECIALIST...OR ANY OTHER PERSON having reasonable cause to suspect that a child is a neglected child, an abused child, or a victim of commercial sexual exploitation or human trafficking SHALL cause an oral report to be made immediately by telephone or otherwise and follow as soon thereafter as possible by a report in writing to Dept. of Child Protections Services...
- ▶ (2) Any report shall contain the names and addresses of the child and his parents or other persons responsible for his care, if known, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, any other information that might be helpful in establishing the cause of the injury, and the identity of the perpetrator.



Heather tells you that James is abusive to her. She says he has never been that way around the kids but he blames her for CPS involvement and is violent to her. There is a family team meeting where CPS becomes aware of this and client says James has moved out. Heather tells you after the meeting that yes, he moved out but he still spends 2-3 nights a week there. CPS insists that James can't be there when the kids are.  
Should you?

# James is abusive but "moved out". Should you:

- A. Do nothing – James has moved out
- B. Inform CPS that James is there 2-3 nights a week
- C. Talk to Heather about CPS's requirement and advise her that he needs to stay away while the kids are there.

A decorative horizontal bar with a blue-to-teal gradient. A small green square is positioned at the top right corner of the bar.

?????

- ▶ Client Confidentiality
- ▶ Mandatory Reporting
- ▶ Candor towards the tribunal



Questions??

Thoughts???

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